



Comments of the Advocates for Herring Bay
On Maryland's Phase I Watershed Implementation Plan for
the Chesapeake Bay Total Maximum Daily Load
Submitted by Peter Legg and Stephen Marley
To the Environmental Protection Agency and the Maryland Department of the Environment
November 8, 2010

The Advocates for Herring Bay (AHB) strongly support efforts by the State of Maryland to meet and maintain the limits established by the Environmental Protection Agency (EPA) on pollutant loads to the Chesapeake Bay. The measures outlined in the state's September 24, 2010 draft Watershed Implementation Plan (WIP) for the Chesapeake Bay Total Maximum Daily Load (TMDL) would, if implemented effectively, help us make progress toward those goals. What is unclear, however, is how the wide range of options in the draft plan will produce tangible results. To assist in that effort, we offer the following five recommendations for the final plan:

1. Provide Guidance on Funding for Engineering and Management Strategies

Maryland's draft plan correctly emphasizes the most cost-effective measures, such as accelerating the deployment of enhanced nutrient reduction technologies at major wastewater treatment plants and expanding the use of agricultural cover crops. AHB supports those measures as well as proposed investments in stormwater management, buffer restoration, and septic system upgrades in the Critical Area.

Implementing the WIP will require substantial financial resources. While state executive branch agencies cannot make monetary commitments on behalf of the state, they can help build a consensus for increasing the state's investment by providing estimates of the costs and benefits of what is being proposed, at least for the near term. As taxpayers, we urge our state and local governments to secure the necessary financing, starting in 2012. Specifically, we support setting firm funding targets for state and local initiatives (for example, for Bay Restoration Fund, the Chesapeake and Atlantic Coastal Bays Trust Fund, and local restoration funds); raising fees if necessary to actually meet those targets; and treating those proceeds as dedicated sources of funding that cannot be diverted to other governmental purposes.

2. Avoid Unintentionally Encouraging Growth in the Critical Area

We question the plan's unconditional support for connecting failing septic systems to waste water treatment plants, particularly in the Critical Area. Under the state's Smart Growth policies, development is directed to areas served by sewers. Thus, adding sewer capacity in the Critical Area could channel additional development to the same environmentally sensitive areas the state promises to protect and restore. In addition, areas with "antiquated lots," such as those that were

subdivided in the 1920s at levels of density much higher than would be allowed today, would come under intense pressure for in-fill development because most pre-existing property rights were grandfathered under the 1984 Critical Area law.

Decisions about extending sewer service should be made on a case-by-case basis, based on a holistic assessment of the environmental impacts and benefits. In our view, new sewer connections should not be allowed in the Critical Area except in cases where the added capacity would have a negligible effect on the development potential and ecological integrity of the area being served. If sewer service extension is the only feasible way to address widespread failures, state or local governments should mitigate the ecological risks by purchasing development rights or attaching new restrictions on development in the Critical Area.

3. Develop Laws and Incentives for Preserving Existing Natural Filtration Systems

Natural filtration systems—streamside buffers, forests, and wetlands—are the most cost-effective methods for reducing the amount of pollution getting into our streams and waterways. While we are pleased that the state plans to spend funds to revitalize buffers and wetlands, we believe that more needs to be done to strengthen protections for existing habitats that are providing those ecological services at no cost to taxpayers. The final plan should include more proactive initiatives to protect existing filtration areas; possible strategies could include strictly enforced statewide performance standards for protecting all stream buffers from development impacts.

4. Develop Laws and Incentives for Minimizing Impacts of Growth

As noted in Chapter 3, existing land use policies fail to account for the pollution loads associated with different types of development, which exacerbates the adverse impacts of population growth. To address this shortcoming, the plan recommends statewide policies that would assign per-capita pollution loading factors to different types of development and require those with the highest environmental cost to be offset by certain mitigation measures.

We support adoption of land-use policies that incorporate per-capita loading factors. Without such incentives, the Bay will continue to suffer a “death by a thousand cuts.” To be effective, however, these guidelines must be incorporated into state and local land-use laws. We urge the state to promptly enact the legislative changes needed to apply this approach statewide and to craft conforming ordinances for local governments.

5. Measure and Verify Results

EPA and the State must be able to accurately track and verify implementation of the many nutrient reduction measures outlined in theWIP. The two-year milestones and the interim 2017 plan should include clear benchmarks, such as a list the individual wastewater treatment plants slated for enhanced nutrient removal, the planning and implementation dates, the pre- and post-implementation effluent flows, and the nutrient concentrations and loadings. Similar data should be provided by geographic area (for example, by county or model segment) for agricultural and other nutrient reduction programs. Good intentions simply are not enough anymore. The EPA

and the citizens of Maryland need assurances that the state has the capability to effectively measure progress toward our common goals.

Ultimately, the only credible metrics for success will be tangible improvements in the quality of the water and aquatic and terrestrial habitats of the Chesapeake Bay. To ensure progress, the state must test the real-world performance of new technologies and verify that strategies are actually being deployed and performing as predicted.

Act Now

According to press reports, some jurisdictions and business interests want EPA and the state to weaken and delay implementation of the Bay TMDL. We strongly oppose these sentiments, and encourage the EPA and the state to resist those pressures. As Marylanders, we are proud that our state is taking a leading role in the effort to restore this national treasure to its former glory and protect it for future generations. The time to secure the fortunes of the Chesapeake is now.

If you would like to contact us about these comments, please email Peter Legg and Stephen Marley at herringbay@gmail.com.